IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.2512 of 2006

Mr.Satish Bhoja Shetty & anr. Petitioners
Vs.
Dr.Rama Mango Kharche & ors. Respondents

Mr.R.P.Behere for petitioners.
Ms.S.D.Khot for resp.no.1.
Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 23, 2007.

P.C.

1. Heard. Mrs.Khot appears for the respondent no.1 and the learned APP appears for the Respondent no.3 - State of Maharashtra. Perused the affidavit-in-reply filed by the respondent no.1.

2. Rule. Respondents waive service. By consent the Rule is made returnable forthwith.

3. The present petitioners filed private complaint before the learned Judicial Magistrate, First Class at Pune for the offences punishable under Sections 119, 116, 167, 217, 218, 409 and 420 read with Sections 120-B and 34 of IPC against the respondent nos.1 and 2. The learned Magistrate was pleased to issue the process on 22/8/2006 in the said

criminal case registered as Criminal Case No.4041 of 2005 and it came to be challenged by both the accused by filing Criminal Revision Application Nos.707 and 405 of 2006 respectively. Apart from challenge to the said order on merits, an issue was raised before the Revision Court regarding the competency of the learned APP to appear and defend the said officers when the complaint was filed against them personally and not in respect of any lapses in their official capacity. The Revision Court held that so long as the District Magistrate had directed the APP to appear for them, the appearance of the learned APP could not be objected to. It is not necessary to go into the legality of this issue in this petition as it succeeds against the original accused no.1 on merits.

4. There is no dispute that the accused no.1 - Dr. Rama Mango Kharche appeared for the Maharashtra Public Service Examination on 1/4/1969 on the basis that he was born on 8/6/1947. There is also no dispute that unless a candidate is 21 years or more he cannot appear for the MPSC examination. The Government of Maharashtra appointed him as Deputy Registrar, Co-operative Societies which is a Gazetted

post, on 16/3/1970. The first Seniority List was published in the year 1983 and the date of birth of the accused was again shown in the said Seniority List as 8/6/1947. However, when in the year 1994 another Seniority List was prepared and published the date of birth of the accused was shown as 27/5/1948 and presumably by changing the date of birth. The complainant, therefore, contended that if the accused no.1 was born on 27/5/1948 as he subsequently claimed, he was not eligible to appear for the MPSC examination held on 1/4/1969 as he was of less than 21 years of age and if he was eligible to appear for the MPSC examination held on 1/4/1969, his application to correct the date of birth to 27/5/1948 was nothing less than a fraud being played on the Government.

5. So far as the role of the accused no.2 is concerned, in the complaint after paragraph 9 there is nothing to attribute to him and it has been tried to be submitted that accused no.2 helped the accused no.1 by postponing his date of retirement and that accused no.2 kept mum in order to support the illegal acts of the accused no.1. It was also submitted that one Mr. B.B. Shelke was appointed as the Enquiry

Officer and he submitted the report in which he recorded the findings that accused no.1 had committed fraud and deceived the Government of Maharashtra. It is alleged that inspite of this enquiry report submitted by Shri Shelke, accused no.2 did not take any action against the accused no.1 and he continued in service even after attaining the age of superannuation.

6. Along with the affidavit-in-reply the accused no.1 relied upon the application dated 30th September 1976 submitted to the Secretary in the Department of Agriculture and Co-operation praying for correction in the date of birth and the subsequent order dated 25th April 1977 changing the date of birth of the accused no.1 to 27/5/1948. The report of the Bund Garden Police Station submitted on 2/5/2006 to the learned Judicial Magistrate, First Class at Pune of an enquiry undertaken under Section 200 of Cr.P.C. is on record and it says that there is no prima facie case made out against the accused no.2. However, as per the said report if the date of birth of accused no.1 was 27/5/1948, he was not eligible to appear for the MPSC examination held on 1/4/1969.

7. The issue as to whether the date of birth 8/6/1947 changed to 27/5/1948 was done as per the legal procedure is a matter of evidence which will have to be gone through and, therefore, there is a triable case made out against the accused no.1. It is for the State Government to place before the learned Magistrate the appropriate record but the police report does prima facie show that the school record of the accused indicated his date of birth as 8/6/1947. The validity of the change of date of birth to 27/5/1948 including the documents on the basis of which the said change was effected is a matter of enquiry by way of trial before the learned Judicial Magistrate, First Class at Pune. However, as far as the accused no.2 is concerned, the learned Judge of the Revision Court is right in holding that prima facie there was nothing making out a triable case against the said accused.

8. Hence the petition succeeds partly and the impugned order dated 18th October 2006 passed by the learned Addl. Sessions Judge at Pune in Criminal Revision Application No.707 of 2006 is quashed and set aside. Whereas the said order so far as it relates to Criminal Revision Application No.705 is

hereby confirmed. The order of process passed against accused no.1 by the learned Judicial Magistrate, First Class in Criminal Complaint No.4041 of 2005 is restored and it is directed that the trial shall proceed only against the accused no.1. Trial is hereby expedited.

9. Rule is made absolute accordingly.

10. Writ to go to the trial Court forthwith.

(B.H.MARL